IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

MFA.No. 705 of 2002()

AGAINST THE AWARD DT.21.6.01 OF THE WCC.223/1999 of W.C.C.,KOZHIKODE
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APPELLANT/APPLICANT:

ABRAHAM, S/O. KURIAN,
THENGUMPALLIL HOUSE, KAVILUMPARA
AMSOM AND DESOM, P.O. KUNDUTHODE,
KOZHIKODE DISTRICT.

BY ADV. SRI.JACOB ABRAHAM
SMT.KOCHUMOL KODUVATH

RESPONDENTS: RESPONDENTS/OPPOSITE PARTIES:
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1. **T.J. KURIAN, S/O. OUSEPH,**
   THENGUMPALLIL HOUSE, P.O. CHAPPANTHOTTAM,
   KAVILUMPARA, KOZHIKODE DISTRICT.

2. **THE ORIENTAL INSURANCE CO.LTD.,**
   BRANCH OFFICE, SREENIDHI BUILDING,
   NARAYANA NAGAR, VATAKARA, KOZHIKODE DISTRICT.

BY ADV. SRI.M.JACOB MURICKAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 30 /05 /2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

M.F.A. No. 705 of 2002

Dated this the 30th day of May, 2007

Judgment

Koshy, J.

Appellant met with an accident during the course of employment. He applied for compensation under the Workmen's Compensation Act for the injuries sustained by him. The accident occurred on 28.4.1999. He was a driver by profession. His salary was Rs.3,500/-. Doctor certified 38% loss of earning capacity. Tribunal took only 25% and awarded Rs.44,901/- as compensation.

2. Two grounds are mentioned by the appellant. First is that Rs.2,000/- was only taken as the monthly wages. As rightly pointed out by the learned counsel for the insurance company, maximum monthly wages that can be taken for calculating compensation on the date of accident is only Rs.2,000/- and that was taken into consideration. Admittedly, injury caused to the claimant is not a scheduled injury. Under section 4 (c) (ii) of the Workmen's Compensation Act, if the injury is not a scheduled injury, compensation should be calculated by the Commissioner on the basis of assessment of loss of earning capacity by a qualified medical practitioner. Ext.A6 medical certificate

is issued by Dr.M.K. Ravindran, Lecturer in Orthopaedics, Medical College, Kozhikode shows the disability as follows:

> "Today, on examination, the findings are: (1) Partial ankylosis of Rt. ankle with flexion and extension motion limited to axe form 90 degree angle to 105 degree plantar flexion; (2) Inversion and eversion of ankle joint is completely absent; Shorten of Rt. leg by 1.5 inches; (4) Wound over lateral malleolus is not healed with emposed bone and suspected evidence of osteo myelitis."

Professional disability was assessed at 38%. Doctor observed as follows:

> "He is a driver by profession. Considering his profession, his total permanent professional disability is assessed as Thirty eight percent (38%) with reference to McBride's scale."

Commissioner has taken only 25% for no reason whatsoever. It is not stated why professional disability was reduced. Therefore, we are of the opinion that compensation has to be calculated for 38%. Therefore, amount of compensation payable will be Rs.2000 x $\frac{60}{100}$ x $\frac{38}{100}$ x 149.67 = Rs.68,250/-.

Commissioner has awarded only Rs.44,901/-. Hence, additional compensation payable will be Rs.23,349/-.

Statutory interest payable is 12%. We direct the second respondent insurance company to deposit the above amount with interest at the rate of 12% from the date of the order of the commissioner, that is, 21.6.2001.

Appeal is allowed partly.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

vaa

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.F.A. NO.705/2002

JUDGMENT

Dated:30th May, 2007